

BEFORE THE CIRCUIT COURT OF MISSISSIPPI COUNTY
STATE OF MISSOURI

STATE BOARD OF EMBALMERS)	
AND FUNERAL DIRECTORS,)	
)	
Plaintiff,)	
)	
v.)	CASE No. 14MI-CV00024
)	
SHELBY FUNERAL HOME, INC.,)	
and CHARLES R. PENROD,)	
)	
Defendants.)	

CONSENT AGREEMENT AND JUDGMENT
FOR A PERMANENT INJUNCTION

The Missouri State Board of Embalmers and Funeral Directors (the "Board"), plaintiff, and Shelby Funeral Home, Inc., and Charles R. Penrod ("Penrod"), defendants, ask that the Court enter its order issuing this Consent Agreement and Judgment ("Consent Judgment") thereby resolving all existing disputes in this matter. This Consent Judgment embodies the terms of a settlement as set forth below.

WHEREAS, the Board, Shelby Funeral Home, Inc., and Penrod wish to settle and resolve all disputes raised in this matter without expending the additional time and expense that would be required to bring those disputes to final resolution in this court;

WHEREAS, each of the parties, individually and collectively, acknowledge that each of them is executing this Consent Judgment of his, or its own free will and volition;

WHEREAS, the parties recommend that the Court approve this Consent Judgment and order the Consent Judgment as a judgment and permanent injunction.

NOW, THEREFORE, in consideration of the premises and mutual promises, covenants, and agreements contained herein, the adequacy and sufficiency of which are hereby acknowledged and confessed, the parties agree as follows:

1. The Board is an agency of the State of Missouri created and existing pursuant to Section 333.151, RSMo¹, for the purpose of administering and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo, and the regulations adopted pursuant to those chapters.

2. Shelby Funeral Home, Inc. is a Missouri corporation, administratively dissolved as of February 13, 2004, with its offices located at 104 West Olive, East Prairie, Mississippi County, Missouri 63845.

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

3. Charles R. Penrod is an individual who resides in East Prairie, Mississippi County, Missouri and holds embalmer license 005881 and funeral director license 004125.

4. The Court has personal jurisdiction over Defendants pursuant to Section 506.500, RSMo and Article V, Section 14, Mo. Constitution.

5. The Court has subject matter jurisdiction over this matter pursuant to Article V, Section 14, Mo. Constitution.

6. The acts, practices and conduct described in this Consent Judgment occurred within Mississippi County, Missouri.

7. Section 333.335, RSMo, authorizes the Court to grant an injunction, restraining orders or other orders as it deems proper.

8. From December 31, 2009 until the present, Shelby Funeral Home, Inc. and Penrod have offered to engage and have engaged in the performance of acts and practices for which a registration or authority, permit, or license is required by Sections 333.310 to 333.340, RSMo, and has done so without the required registrations, authority, permits or licenses.

9. From December 31, 2009 until the present, Shelby Funeral Home, Inc. and Penrod have engaged in practices and business in violation of provisions of Chapter 333 and Chapter 436 in relation to acting as a preneed

provider, a preneed seller, and as a funeral establishment without the licenses required by Sections 333.315, 333.320, and 333.061, RSMo, respectively, and have engaged in practices and business that present a substantial probability of serious danger to the health, safety and welfare of residents of this state and customers of Shelby Funeral Home, Inc. and Penrod.

10. From December 31, 2009 until the present, Shelby Funeral Home, Inc. and Penrod offered to engage and engaged in acts and practices of an embalmer and funeral director through Shelby Funeral Home, Inc., even though Shelby Funeral Home, Inc. held no funeral establishment license as required by §§ 333.021.1, 333.061.1, and 333.071, RSMo.

11. Since August 28, 2009, Shelby Funeral Home, Inc. and Penrod offered to engage and did engage in acts and practices of a preneed seller and provider without being licensed as a preneed seller or provider as required by §§ 333.315.1, and 333.320.1, RSMo.

12. The conduct of Shelby Funeral Home, Inc. and Penrod presents a substantial danger to the welfare of the residents of the State of Missouri and their clients.

13. This Consent Judgment is in compromise of disputed matters. The terms of the Consent Judgment are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Consent Judgment nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

14. If any provision of this Consent Judgment is declared invalid by a court of competent jurisdiction, the rest of the Consent Judgment shall remain in full force and effect and shall not be affected by such declaration.

15. Shelby Funeral Home, Inc. and Penrod, for themselves, their agents, partners, shareholders, officers, directors, successors, executors, administrators, heirs, and assigns, and for anyone claiming through them, hereby waive and release and forever discharge the Board, the Attorney General of the State of Missouri, and any of their employees, agents, attorneys, including any former members, employees, and agents, of or from any and all liability, claims, actions, causes of action, suits, sums of money, accounts, reckonings, controversies, fees, costs, expenses, compensation, damages, and demands, whatsoever, in law or equity, whether known or

unknown, which may be based upon, arise out of, or relate to any of the matters raised in the Board's Petition and/or this Consent Judgment, and any documents incorporated herein by reference or resulting from the negotiation or execution thereof, which Shelby Funeral Home, Inc. and Penrod ever had, now has, or shall or may have, in his own name or jointly with or through any other person, natural or corporate, by reason of any act, matter, transaction, cause, or thing whatsoever arising out of any act, matter, transaction, cause, or thing whatsoever connected with or referred to, in any matter asserted or involved in this litigation or the negotiation or execution of this Consent Judgment, and/or any documents that may be incorporated herein by reference.

16. Shelby Funeral Home, Inc. and Penrod waive any right to appeal they may have from the entry of this Consent Judgment.

17. This Consent Judgment contains the entire understanding of the parties and supersedes all prior understandings, agreements or undertakings of the parties with respect to the subject matter contained in this Consent Judgment, and may be amended only as stated in this Consent Judgment. Wherever possible, each provision of this Consent Judgment shall be interpreted in such a manner as to be effective and valid under applicable

law. This Consent Judgment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, if any. This Consent Judgment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together but one and the same instrument.

18. This Consent Judgment is entered into pursuant to the laws of the State of Missouri and shall be governed and construed in accordance with same.

19. The parties agree and understand that the Board will file this Consent Judgment with the Court and will seek approval of this Consent Judgment from the Court.

20. The parties agree that execution of this Consent Judgment constitutes actual notice of the terms and provisions of the Consent Judgment and, therefore, Defendants expressly waive service of a copy thereof.

21. Nothing in this Consent Judgment shall be construed as relieving Defendants of the obligation to comply with all state and federal laws, regulations or rules, or relieving Defendants from any future liability under the law or from legal claims for past conduct not addressed in this Consent Judgment, or as limiting the ability of the Attorney General, the Board or any

other governmental entity from enforcing such provisions with respect to Defendant, including, but not limited to seeking discipline against any professional licenses held by either Defendant and/or the State of Missouri pursuing collection against Defendants for any taxes or other obligations owed to the State of Missouri.

22. The Board will not seek an order of contempt due to Defendants providing goods or services for any at need or preneed contract so long as the services provided are for any person who died on or before July 22, 2014 and are completed by 5:00 p.m. on August 22, 2014.

23. By no later than 5:00 p.m. on August 15, 2014, Penrod shall provide the Board with a list of all current and active preneed contracts and for each contract, shall provide either a copy of the contract and related funding documents or a list stating for each contract, the name of the purchaser, the purchaser's address, the type of funding for the preneed contract, the location of funds for the preneed contracts and the amount of funds held for each preneed contract.

24. By no later than August 22, 2014, Shelby Funeral Home, Inc. and Penrod shall take all necessary steps to ensure that any current and active preneed funeral contracts and any funds or assignments held to fund those

preneed funeral contracts are transferred to a licensed seller and provider and that Shelby Funeral Home, Inc. and Penrod shall ensure that each preneed purchaser receive written notice of the assignment of those preneed contract with notification of the name, address and contact information of the new preneed seller and provider. Penrod shall ensure that a copy of each such letter be received by the Board no later than 5:00 p.m. on August 29, 2014. Penrod shall ensure that, no later than August 29, 2014, the new seller and the new provider provide the Board with the required affidavit accepting responsibility for and agreeing to honor the transferred preneed contracts in accord with the Board's protocol.

25. Penrod shall notify the Board, in writing, no later than 5:00 p.m. on August 29, 2014 with the name, address and contact person of the licensed preneed seller(s) to whom he assigns each preneed contract.

26. THE PARTIES ACKNOWLEDGE THAT THEY HAVE EACH READ AND FULLY UNDERSTAND THE TERMS AND NATURE OF THIS CONSENT JUDGMENT AND RELEASE OF CLAIMS, AND EACH HAVING HAD THE OPPORTUNITY TO SEEK THE ADVICE OF COUNSEL CONCERNING THE TERMS THEREOF, WARRANT THAT THIS CONSENT JUDGMENT CONTAINS THE ENTIRE AGREEMENT

BETWEEN THE PARTIES, AND THAT NO PROMISE, INDUCEMENT, OR AGREEMENT NOT EXPRESSLY CONTAINED HEREIN HAS BEEN MADE.

INJUNCTIVE RELIEF

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Defendants and their owners, officers, directors, managers, agents, employees and any other persons acting at the direction of Shelby Funeral Home, Inc. or Penrod are permanently enjoined, restrained and prohibited from violation of the provisions of Chapters 333 and 436, RSMo, in connection with any acts involving the operation of any funeral establishment, preneed seller, and/or preneed provider, and any conduct related to preneed funeral contracts except as expressly permitted in this Consent Judgment, unless and until Defendants obtain the required licensure. Specifically:

A. Defendants shall not offer to engage nor shall they engage in acts or practices of a funeral establishment including, but not limited to, holding out to the public in any way, including by any sign or advertisement, that Shelby Funeral Home is open for business, making

arrangements for final disposition of any dead human bodies or any other conduct for which an establishment license is required;


B. Defendants shall not offer to engage or engage in acts or practices of a preneed provider including, but not limited to, being listed on an active preneed contract as a preneed provider, fulfilling any preneed contract as a provider, or making any claim for funds from any preneed seller;

C. Defendants shall not offer to engage or engage in acts or practices of a preneed seller including, but not limited to, selling any preneed contracts, performing any duties or obligations of a seller, being designated as a seller on any preneed contract, holding any funds or any insurance assignment from any person who expects those funds to pay for final disposition of a dead human body, or holding out to the public in any fashion of being a preneed seller;

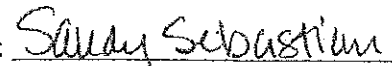
D. Defendants shall cooperate in any way with the Board or any representative of the Board in complying with the terms of this Consent Judgment or any inspection or examination conducted by the Board to ensure compliance with the terms of this Consent Judgment; and

E. Defendants shall ensure that all active preneed funeral contracts are transferred to a licensed seller in accordance with the terms of this Consent Judgment by no later than Friday, August 22, 2014, and that all ordered reports are provided to the Board by no later than 5:00 p.m. on Friday, August 15, 2014, or Friday, August 29, 2014, respectively.


DEFENDANTS


Charles R. Penrod 7/24/2014
Date

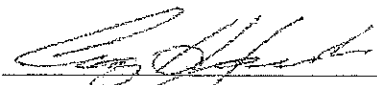
BOARD OF EMBALMERS AND
FUNERAL DIRECTORS

By:  7/24/14
Sandy Sebastian Date
Executive Director

SHELBY FUNERAL HOME, INC.

By:  7/24/2014
Charles R. Penrod Date
President

CHRIS KOSTER
Missouri Attorney General


Craig H. Jacobs
Assistant Attorney General
Missouri Bar No. 48358

SO ORDERED AND ADJUDGED.


Honorable David A. Dolan 7-24-2014
Date

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically pursuant to Rule 103 and Special Rule 18 through Missouri Case Net, and faxed, on this 24th day of July, 2014, to:

Shelby Funeral Home, Inc.
Charles R. Penrod
Fax: (573)-649-3545

/s/ Craig H. Jacobs
Assistant Attorney General